APPENDIX

Opinion of the Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21919

WILLIE JACKSON, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Middle District of Georgia.

(November 16, 1965.)

Before TUTTLE, Chief Judge, BELL and COLEMAN, Circuit Judges.

PER CURIAM: Appellant bases his case here on his contention that the search which produced the illegal whiskey was made in connection with an illegal arrest, and since the search was made without a warrant, it was error for the trial court to admit in evidence the fruits of the search.

The case was tried without a jury and the same evidence was received by the trial court on the merits of the case as was submitted in connection with a motion to suppress the evidence. Since this arrest was made by State officers for offenses against the State of Georgia, its validity must be determined by reference to Georgia law. *Collins* v. *United States*, 5 Cir., 289 F. 2d 129, 131. The general arresting power of officers is provided for in Georgia Code Section 27-207 as follows:

> "An arrest for a crime may be made by an officer, either under a warrant, or without a warrant if the

offense is committed in his presence, or the offender is endeavoring to escape, or for other cause there is likely to be a failure of justice for want of an officer to issue a warrant."

It is claimed by appellant that under the Georgia law an officer may not arrest without a warrant even in the case of an alleged felony upon probable cause. The challenge has more force when the question is whether, under the Georgia law, an officer may arrest without a warrant upon probable cause in the case of an alleged misdemeanor. We do not reach these questions here.

In the trial court the officers testified that they started the pursuit of appellant in his automobile because they recognized him while driving an automobile at a time when they knew his driver's license had been suspended. This would clearly bring the arrest within the language of the Georgia statute since the offense would then be committed in the presence of the officers. Although the appellant argues strenuously that prior conduct of the arresting officers cast considerable doubt upon their testimony that they really arrested Jackson for the violation of the Georgia traffic laws, they did so testify and the trial court made a specific finding of fact that that was the basis of the arrest. We can not, on this record, overturn this finding of fact as being clearly erroneous. That being so, the search that was made of the vehicle at the time the arrest was completed, was permissible under the well recognized authorities. See *Williams* v. *United States,* 6 Cir., 314 F. 2d 795, and *Kelly* v. *United States,* 5 Cir., 197 F. 2d 162.

The judgment is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1965

D.C. Docket No. 8153—Criminal

No. 21919

WILLIE JACKSON, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Middle District of Georgia.

Before TUTTLE, Chief Judge, BELL and COLEMAN, Circuit Judges.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

November 16, 1965

Issued as Mandate:

Filed May 11, 1966

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21919

WILLIE JACKSON, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Middle District of Georgia.

(May 11, 1966)

On Petition for Rehearing

Before TUTTLE, Chief Judge, BELL and COLEMAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.